



PLANNING COMMISSION STAFF REPORT APRIL 14, 2011

| | |
|------------------------------|--|
| Project: | CENTRAL PARK SOUTH MAJOR PLANNED DISTRICT AMENDMENT (PLN2011-00111) |
| Proposal: | To consider a request to approve a Major Planned District Amendment to P-2005-131 (Central Park South) to amend conditions of approval related to affordable housing and homeowner association requirements. |
| Recommendation: | Recommend City Council |
| Location: | 41075 Railroad Avenue in the Irvington Planning Area. APNs 525-0150-001-03, 525-0165-001-03, 525-0195-0001-00, 525-0195-087-03 (See aerial photo next page) |
| Area: | 13± acres |
| People: | Erika Salum/Pulte Homes, Applicant Jennifer Brame, Staff Planner (510) 494-4554; jbrame@fremont.gov |
| Environmental Review: | A Mitigated Negative Declaration was previously circulated and approved pursuant to the California Environmental Quality Act (CEQA). |
| General Plan: | Existing: Residential Medium (11-15 du/ac); Residential High (35-50 du/ac); Private Open Space |
| Zoning: | Existing: Planned District P-2005-131 (Central Park South) |

EXECUTIVE SUMMARY

The applicant has requested a Major Planned District Amendment to Planned District P-2005-131 (known as Central Park South) to modify conditions of approval related to affordable housing and the homeowners association (HOA) to provide greater flexibility in this challenging economic period. These amendments include establishing a series of milestones demonstrating progress toward affordable building construction to be completed during each year the market rate units are being constructed. The proposed amendment to the HOA requirements would allow the applicant/developer to exclude the affordable building from the HOA to limit assessments and financial obligations associated with common area maintenance on the future owner of the multi-family affordable building.

Planning Commission reviewed the proposed project on March 10, 2011, but continued the item, directing the applicant to return tonight with affordable housing representatives who could provide information about State tax credit financing of affordable housing projects.

Staff recommends the Planning Commission recommend the City Council approve the proposed Major Planned District Amendment based on findings and conditions of approval.

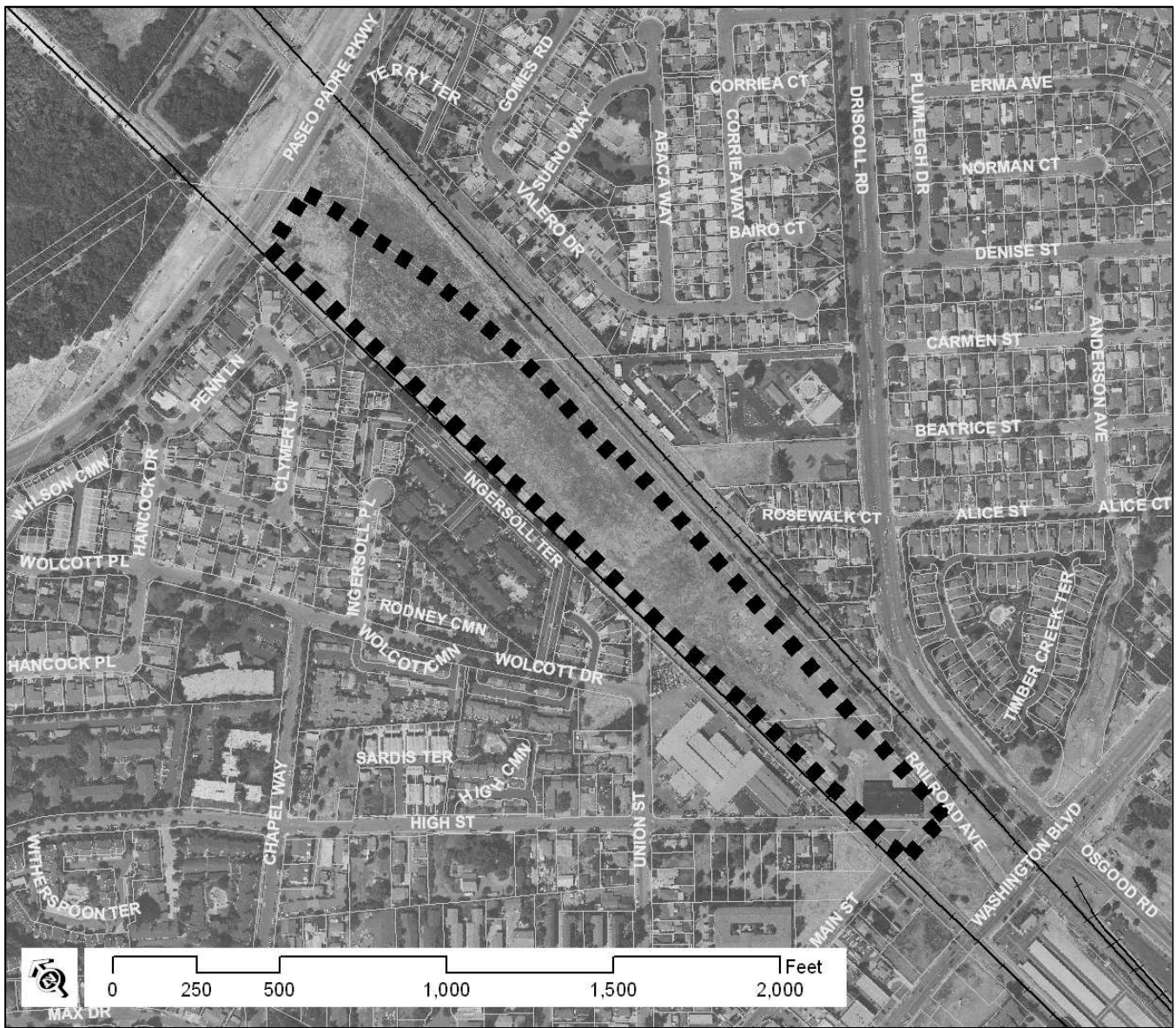


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.

SURROUNDING LAND USES

North: Central Park (across Paseo Padre Parkway); Open Space (O-S)

South: Vacant/Future Irvington BART Station (across Washington Boulevard); Light Industrial (I-L)

East: Union Pacific Railroad tracks and future BART tracks; Light Industrial (I-L)

West: Single-family, Multi-family, Contractor Shops; R-1-6, P-83-2, P-83-12, R-G-40, R-3-35, I-L

BACKGROUND AND PREVIOUS ACTIONS

In December 2008, City Council approved a Mitigated Negative Declaration, General Plan Amendment, Preliminary and Precise Planned District, Vesting Tentative Tract Map, Private Street, General and Summary Street Vacations, and a Development Agreement to allow a 185-unit mixed residential project on a 13± acre site in Irvington. The project site is generally bounded to the north and south by two major roadways, Paseo Padre Parkway and Washington Boulevard, respectively. Directly west of the site is the former Union Pacific Railroad (UPRR) track right-of-way. Directly east of the site are the relocated UPRR tracks and future Bay Area Rapid Transit District (BART) rail corridor that would extend BART services to southern Fremont.

The primary entrance to the project is from Union Street with a secondary access provided near the southern end of the site from High Street (near Main Street). The approval permitted the construction of 145 detached single-family townhomes with a private street alleyway system and landscaped pedestrian paseos on the northern 2/3's of the site, a 1.8-acre private common open space area over an earthquake fault restricted area, and a 40-unit apartment building at the southern end of the site with 36 units set-aside for low and very low income households. The project would also improve the former UPRR corridor to the west of the site as a public multi-use trail that would connect central Irvington from the Main/High Street intersection at the south to Paseo Padre pedestrian overcrossing bridge and Central Park at the north. The approved precise site plan is attached (see Informational 1).

In mid-2010, Pulte Homes purchased the project from the prior owner. Since that time, Pulte has been working towards final tract map approval, with site work (e.g., grading, infrastructure improvements) beginning in spring 2011. Pulte is also in building permit review for the townhome portion of the project, with construction of models anticipated to begin by mid-2011.

The approved affordable housing plan (Condition of Approval A-5) allows Pulte to construct up to 25% (37 units) of the market rate townhomes prior to having the rent-restricted affordable apartments ready for occupancy. However, due to the collapse of the housing market and related impacts on development financing, Pulte's efforts to collaborate with a non-profit affordable housing developer have been challenged with uncertainty. These challenges seem to focus on the uncertainty of securing tax credit financing from the State, which is a primary funding mechanism for affordable housing developers. The proposed amendment to Condition A-5 would provide additional flexibility in the construction of the affordable units, including coordination between the future affordable building owner and the homeowners association, while allowing Pulte to progress with construction of the market rate townhomes.

Since the March 10, 2011 Planning Commission meeting, staff has learned the applicant may sell the multi-family lot to a for-profit housing developer, who would in turn, construct the building and provide the low and very low income rent restricted apartment units. It is staff understanding that the for-profit developer would not apply for or require State tax credit financing in order to fund construction of the building. In order to ensure that the community's interests are protected, Condition of approval A-5 has been modified to also address construction of the 40-unit multi-family building by a for-profit developer.

PROCEDURE FOR TONIGHT'S HEARING

At tonight's hearing, the Planning Commission is charged with completing the following task:

1. Consider the request for approval of the proposed Planned District Major Amendment to modify provisions related to affordable housing and homeowner association requirements.

PROJECT DESCRIPTION

The proposed amendment to Planned District P-2005-131 involves two components:

1) *Affordable Housing Plan*. Amendment of the affordable housing plan for the project, established as Condition of Approval A-5, to extend the time horizon allowed for construction of the 40-unit multi-family building (e.g., affordable building). The applicant has proposed a series of milestones to progress toward construction of the affordable building over the three year period they envision the market rate units would be in production. Evaluation of milestone accomplishment would be completed by the Planning Commission with each annual Development Agreement review. If the milestones are achieved as planned, the Planning Commission could release additional market rate units for the following year, until all market rate units have been released. With each milestone review during market rate unit construction, Pulte would: provide utility/infrastructure improvements on the affordable building lot; submit and process building permits for the affordable building; pay \$4 million toward construction of the affordable building; and submit multiple rounds of tax credit applications to the State to secure financing for the future affordable housing builder (Milestones are provided in Attachment 1 to Exhibit "G").

If, at the end of construction of the market rate units, financing for the affordable building has not been secured, Pulte would transfer the affordable building parcel to the City. The City would in turn use the land and \$4 million in funds for affordable housing purposes.

As part of this amendment, if construction of the affordable building commences prior to the first milestone review in April 2012, the number of restricted units to low and very low income households would remain at 36 of the 40 units in the building (19% of project units). If this occurs, the applicant/developer may receive an additional release of market rate units as prescribed for the first milestone review in April 2012. Release of the final market rate units, however, would not occur until the 40-unit multi-family building has been certified for occupancy. If construction of the 40-unit multi-family building has not commenced prior to the first milestone review in April 2012, 38 of the 40 units shall be restricted to low and very low income households, increasing the project's affordable unit contribution from 19 to 20.5 percent. The restricted units would be dedicated to low and very low income households for a 55 year period (which is reduced from 99 years, as initially required by the approved project, to be consistent with the Affordable Housing ordinance and State tax credit financing requirements).

2) *Homeowners Association and Affordable Building*. Condition of approval B-1 requires that a homeowners association (HOA) be established for the project to maintain and fund improvements to the project's common facilities (e.g., private streets, private open space, fencing, lighting, utilities). Pulte has requested that this condition be amended to allow the affordable building to be excluded from the HOA, if it provides for more functional sharing of the common facilities. Instead, the HOA and affordable building owner would enter into an alternative agreement that would establish which

common facilities the affordable building would share maintenance costs for. Both the codes, covenants, and restrictions (CC&R's) and alternative agreement would be recorded on the townhome lots. Only the alternative agreement would be recorded on the affordable building lot. Additionally, easements would be provided to the residents of the affordable building for use the common areas of the project.

PROJECT ANALYSIS

Affordable Housing Plan. At the time the project was entitled, the economic climate for housing construction was still viable and productive, no Redevelopment Agency funding was requested to aide in construction of the affordable building, and the prior owner anticipated the builder of the project would fund and construct the affordable building. Since that time, the national economy has gone into a severe recession and lending to residential developers has been dramatically reduced. Further, no redevelopment funds are available to assist with construction of this affordable building.

Since Pulte purchased the project in spring 2010, the builder has been intently moving forward with its development. Pulte, however, does not build or operate affordable projects. As such, Pulte has been coordinating with a number of affordable housing builders, both non-profit and for-profit, about the project. And, while many developers are interested in the project, all need to secure financing for construction and long term maintenance and operation of the building. Typically, a large amount of non-profit funding comes from securing State tax credits, and with the challenged State budget, it is unclear how much and when State tax credit financing for this project may be secured. While Pulte could technically construct the affordable building, the non-profits Pulte's been engaged with who would operate the affordable building have said in order to secure tax credit financing for the on-going operation of the building, they also need to construct the building.

The proposed amendment would provide Pulte with a level of certainty that they can manage in order to progress with construction of the market rate unit townhomes. Establishing a series of milestones to demonstrate Pulte's good faith effort toward construction of the affordable building is an acceptable approach to achieve the Affordable Housing ordinance goal of providing housing to households living at or below the moderate income level.

The number of affordable units would not be increased from that originally approved, at 36 of the 40 units (19% of all project units), if construction of the affordable building commenced prior to the first milestone review. However, if, at the time of the first milestone review, affordable building construction has not commenced, the number affordable units would increase from 36 to 38 of the 40 units (20.5% of all project units), thereby providing a greater benefit to the community by assisting a greater number of households.

Further, Pulte would financially contribute toward the construction of the affordable building in two ways: 1) payment of \$4 million to directly help finance the affordable building's construction; and 2) indirectly by completing site improvements around the affordable building (e.g., stubbing of water, sewer, storm drainage lines, power and cable lines to the building's footprint, the private street around the affordable building, and the emergency vehicle access improvements on the City parcel south of the building), as well as processing building permits for the affordable building to be ready for issuance with a combined value of about \$1.22 million. The total financial contribution to the affordable building site is about \$5.22 million. When compared to the affordable housing in-lieu fee value (if the 145 townhomes paid the fee), the cost would be about \$4.46 million. Thus, the increased affordability and

contribution to the affordable building continue to provide a greater benefit to the community than the basic affordability requirement 15% of all project units, set aside as for-sale units to moderate income households.

As described, since the March 10, 2011 Planning Commission meeting, staff has learned the applicant may sell the multi-family lot to a for-profit housing developer, who in turn, would construct the building and provide the low and very low income rent restricted apartments. Condition of approval A-5 has been modified to also address this scenario. Condition A-5 is now structured with three parts; a) applicable to non-profit affordable housing developer; b) applicable to for-profit developer; and c) applicable to both scenarios. Condition A-5(b) addressing the for-profit developer scenario includes milestones similar to that for the non-profit developer, which Pulte must demonstrate completeness of with each annual Development Agreement review, if additional market rate units are to be released. The potential number of units to be released under Condition A-5(b) is identical to that for the non-profit milestones under Condition A-5(a). The primary differences between the non-profit and for-profit conditions are: 1) under Condition A-5(b), the annual or semi-annual application for tax credit financing is not required by the for-profit developer, since no tax credits would be required; and 2) under Condition A-5(b), the City would refund any portion of the \$4 million to Pulte after the building permits have been issued for the multi-family building (since the funds would not be required as the local government contribution for the tax credit application).

Homeowners Association and Affordable Building. Pulte has found that developers of rent restricted affordable housing, both non-profit and for-profit, do not want to be included in the HOA in order to limit on-going assessments and financial obligations that would be required by the HOA. The proposed request would allow Pulte to use an alternative agreement with the owner of the multi-family building that would allow for more functional cost sharing for common areas most used by the multi-family building residents. Similar alternative agreements have been used when multiple HOAs share common facilities, when an HOA shares facilities with a commercial development, or in comparable market rate units and affordable building scenarios. Staff believes providing additional flexibility for management of the common facilities will alleviate concerns of potential developers of the multi-family affordable building about HOA assessments and financial obligations, while ensuring that the its residents have access to the common areas within the project.

FINDINGS FOR APPROVAL

In order to approve the proposed Major Planned District Amendment, the project must be found consistent with the General Plan and Zoning Ordinance. Based on the above analysis, staff finds the proposed Major Planned District Amendment is consistent with the findings made for the project on December 9, 2008 and January 6, 2009, and, as such, is still in conformance with General Plan and Zoning Ordinance. The findings are provided in Exhibit "G" (attached).

CITY FEES

This project will be subject to citywide Development Impact Fees. These fees may include fees for fire protection, park facilities, park land in lieu, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The applicant may elect to defer payment in accordance with the City's Impact Fee Deferral Program.

ENVIRONMENTAL REVIEW

In 2008, a comprehensive environmental analysis of the project occurred pursuant to the California Environmental Quality Act (CEQA). That analysis identified concerns regarding potential impacts in the topics of air quality, geology/soils, hazards/hazardous material, noise, and traffic/transportation. The adopted Mitigated Negative Declaration includes mitigation measures, which reduce the identified impacts to less-than-significant levels. These mitigation measures have been included as conditions of approval for this project. As such, the Planning Commission recommended and the City Council agreed that adoption of a Mitigated Negative Declaration was appropriate. Implementation of these mitigation measures is in process and will be complete prior to issuance of building permit.

CEQA Guideline 15162 states that no subsequent analysis is required unless the lead agency determines that: 1) substantial changes to the project are proposed; 2) substantial changes in the circumstances of the project have occurred potentially resulting in new or increased severity of previously identified impacts; or 3) new information of substantial importance that was not known and could not have been known when the prior environmental determination was made.

The proposed Major Planned District Amendment does not change the findings of the prior environmental analysis in that it would result in identical use and development of the site. The proposed changes to the affordable housing plan affect timing of development and coordination between the homeowners association and the multi-family building's owner. No substantial changes in the circumstances for impact analysis have occurred nor has any new information that could not have been known when the prior analysis was completed been discovered. The proposed changes are consistent with the adopted Mitigated Negative Declaration and Mitigation Monitoring Plan, and no further analysis is required.

PUBLIC NOTICE AND COMMENT

Public hearing notification is applicable. A total of 298 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on February 22, 2011. A Public Hearing Notice was published by *The Tri-City Voice* on February 22, 2011.

ENCLOSURES

Exhibits:

Exhibit "G" [Findings and Conditions of Approval](#)

Informational Items:

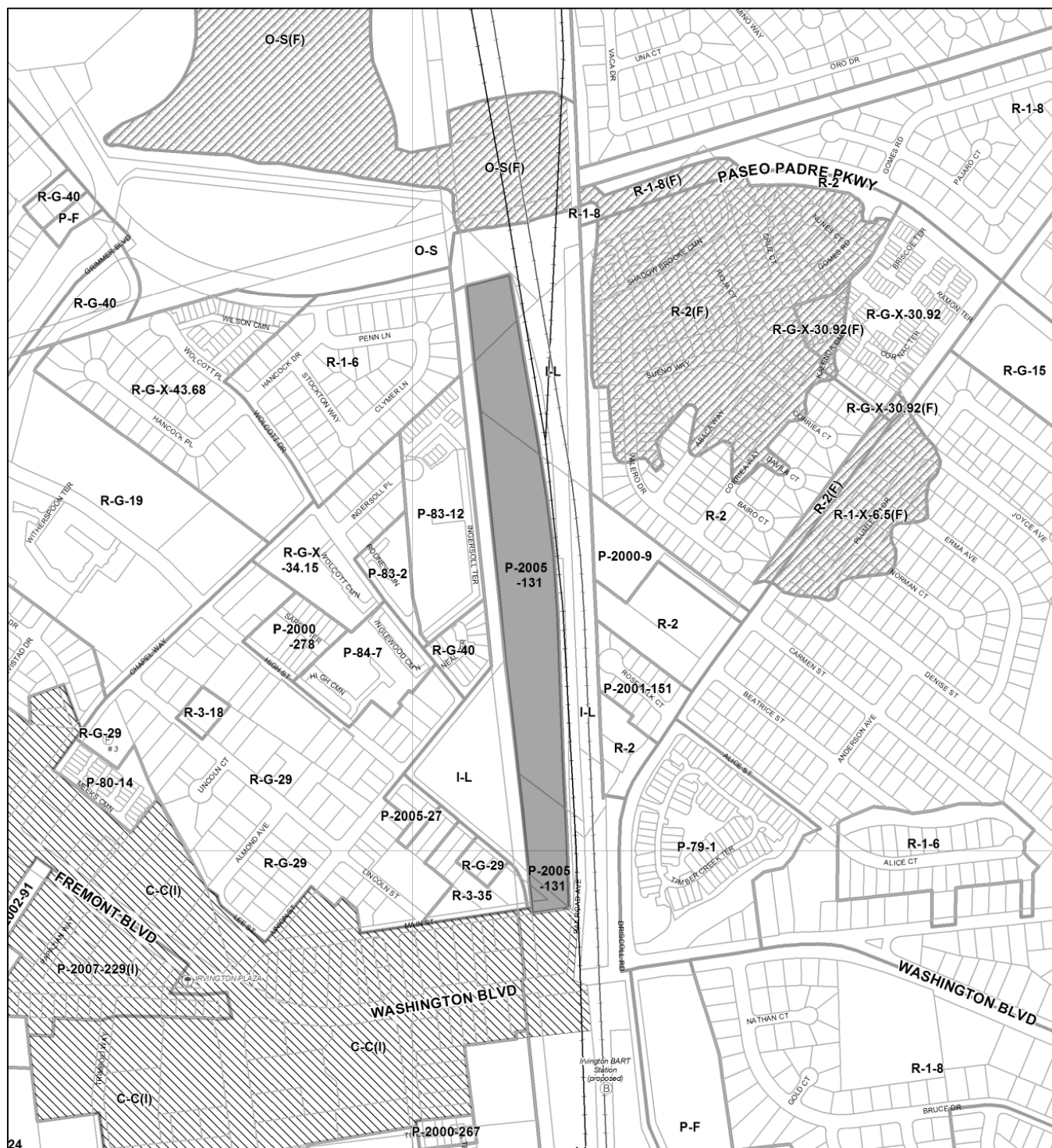
1. [Approved Precise Site Plan for P-2005-131, Central Park South](#)
2. [Applicant's Justification Statement](#)
3. [E-mail correspondence to Planning Commission, dated March 31, 2011](#)

RECOMMENDATION

1. Hold public hearing.

2. Recommend that the City Council find that, consistent with CEQA Guideline 15162, no changes to the project or site circumstances have occurred, nor has new information of substantial importance been discovered, and the previously adopted Mitigated Negative Declaration and Mitigation Monitoring Plan are still valid and no further environmental analysis is required, and find this action reflects the independent judgment of the City of Fremont.
3. Recommend that the City Council find that proposed changes to affordable housing and homeowners association requirements as shown in underline and ~~strike-out~~ in Exhibit “G,” Planned District P-2005-131, fulfill the applicable requirements set forth in the Fremont General Plan and Municipal Code.
4. Recommend that the City Council approve the amendment to P-2005-131, as shown on Exhibit “G,” findings and conditions of approval.

Shaded area represents the project site



Existing General Plan
Shaded area represents project site

